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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Second periodic reports submitted by States parties under articles 16 and 17 of the Covenant

Addendum

BELGIUM* **

[23 December 1997]

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* The initial report concerning rights covered by articles 1 to 15 (E/1990/5/Add.15) submitted by the Government of Belgium was considered by the Committee on Economic, Social and Cultural Rights at its tenth session (see E/C.12/1994/SR.15-17 and 27).

** The information submitted by Belgium in accordance with the guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.1/Rev.1).

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I. IMPLEMENTATION OF THE GENERAL PROVISIONS

Article 1

1. The Government refers to the comments made in the initial report (E/1990/5/Add.15) and to the information supplied by Belgium in its third periodic report on the International Covenant on Civil and Political Rights, submitted in August 1996, concerning article 27 of the Covenant.

Article 2

The direct effect of certain provisions of the Covenant

2. In its initial report, Belgium drew attention to the fact that article 2, paragraph 1, of the Covenant provides that the implementation of the rights enunciated depends on "the available resources" of the State and "the adoption of legislative measures". The programmatic nature of this requirement prevents the provisions of the Covenant from being directly invoked by complainants before Belgian courts and tribunals.

3. However, the Court of Cassation and the Council of State have ruled that Belgium is bound by the "standstill" effect of the provisions of the Covenant. This means that rules of domestic law by which rights embodied in the Covenant were already secured at the time it entered into force in Belgium cannot be challenged or revoked at a later date. Since then, a number of judgements by the Court of Arbitration show a trend towards recognition of the direct effect of certain provisions of the International Covenant on Economic, Social and Cultural Rights.

(a) Judgement of the Court of Arbitration, 15 July 1993

4. Two gendarmerie unions and a number of gendarmes brought before the Court of Arbitration a request for the annulment of a number of provisions of the Act of 24 July 1992, which, inter alia, compells certain of the personnel to hold themselves available, restricts their freedom to join a trade union and denies them the right to strike. The complainants pleaded that obligatory availability, which is not considered part of the work and therefore not remunerated, contravened article 7 of the Covenant, which provides for fair wages. They also asserted that the general ban on striking imposed on gendarmerie personnel contravened article 8 of the Covenant.

5. With regard to article 7 of the Covenant, the Court of Arbitration found that there was no violation because the contested provisions did not specify that such availability should not be remunerated. With regard to article 8, the Court judged the scope of the article to be similar to that of article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and that the provisions of both articles had direct effect in Belgian law.

(b) Judgement of the Court of Arbitration, 8 March 1994

6. The complainants held that the legal provisions regulating the work of clinical biology laboratories violated the principle of equality in the Belgian Constitution with regard to the right to work, which is enshrined in article 6 of the Covenant.

7. The Court pointed out that the rights and freedoms protected by articles 10 and 11 of the Constitution are those deriving from the provisions of international conventions that have a direct effect and have been made applicable to the domestic legal order by an act of assent. The Court added that this was the case for the provisions of international law, including the Covenant, invoked by the complainants, with the exception of the Universal Declaration of Human Rights.

8. A distinction must be made, however, between the decisions of the Court of Arbitration, which exercises indirect control since it assesses the degree to which laws conform to article 10 (equal treatment), 11 (discrimination) and 24 (freedom of instruction) of the Constitution (which incorporates the texts of duly ratified international treaties) and the decisions of the courts and tribunals, in particular the Court of Cassation and the Council of State, which exercise direct control. The latter have not yet recognized any direct effect of the Covenant.

Anti-racist provisions

(a) Anti-racism Act of 30 July 1981

9. The act of 30 July 1981, which punishes certain acts inspired by racism and xenophobia, was amended in 1994, partly in order to combat discrimination in employment or at work more effectively.

10. The legislature has incorporated into article 1 of the Act the definition of discrimination used in the International Convention on the Elimination of All Forms of Racial Discrimination, which refers to acts that have the effect of nullifying, impairing or restricting the recognition or exercise, on an equal footing, of human rights and fundamental freedoms in the economic, social or cultural sphere. The legislature has also, in article 2 bis of the Act, made it an offence to discriminate racially in any way (race, colour, descent, nationality or ethnic origin) against any person in the context of employment, vocational training, an offer of employment, recruitment, the execution of a contract or the dismissal of a worker. In addition, employers are responsible under civil law for the payment of any fines their employees or representatives may be sentenced to pay. In order to facilitate the prosecution of offences under article 2 bis, the legislature, in 1994, abolished the previously set condition of public hearings. The burden of proof of the discriminatory nature of the contested action remains, however, with the complainant.

11. The legislature has taken the innovative step of allowing workers' and employers' representative organizations to appear in court in cases arising out of the implementation of article 2 bis. The three main workers' representative organizations have signed protocols with the Equal

Opportunities and Anti-Racist Centre agreeing to limit union action to the search for a solution (basically through mediation) within the company, and to refer to the Centre any cases in which a criminal charge or criminal indemnity action should be brought. However, the unions reserve the right to join with the Centre's claimants for criminal indemnification in certain test cases.

(b) Texts produced by the National Labour Council

12. The National Labour Council (CNT), a joint body made up of delegates from the most representative of the employers' and workers' organizations, and which has the status of a public body, has begun to combat racial discrimination in collective labour agreements, which have real legal force.

13. Thus, Collective Labour Agreement No. 38 bis, of 29 October 1991, a supplement to Collective Labour Agreement No. 38, of 6 December 1983, which establishes a regime of rights and obligations for employers and applicants during the recruitment and selection procedure, defines the notion of equality of treatment, stating that race, colour, descent, ethnic origin or nationality may not constitute grounds for differentiating among applicants. It should be noted, however, that this provision is more of a general guideline than an imperative.

14. Collective Labour Agreement No. 9 bis allows workers' representatives to obtain on demand information on the structure of employment broken down by nationality.

(c) Trade union initiatives

15. Workers' representative organizations encourage their union delegation to negotiate with the company board the incorporation into the employment regulations of a non-discrimination clause reading as follows: "Workers and employers should observe all the rules of etiquette, politeness and good manners, including towards visitors. This also means that they should refrain from all forms of racism or discrimination and treat everybody with the same human respect for their dignity, feelings and beliefs. Therefore, all forms of verbal racism and the dissemination of racist literature or tracts are prohibited, together with all forms of discrimination based on gender, sexual orientation, race, colour, descent, origin, nationality or belief".

Article 3

16. This article is discussed in the reports of Belgium on the implementation of the International Covenant on Civil and Political Rights and of the Convention on the Elimination of All Forms of Discrimination against Women, and in the discussion of each individual article below.

Article 5

17. The Government refers the Committee to its comments on article 5 contained in the initial report of Belgium on the International Covenant on Civil and Political Rights (CCPR/C/31/Add.3, paras. 66-67).

18. Article 5 is a safeguard and interpretation clause the essence of which - paragraph 1 - is familiar to the Belgian authorities, since this paragraph corresponds to article 17 of the European Convention on Human Rights. The Belgian courts would naturally have to interpret current legislation according to this provision when trying cases in which individuals, groups or administrative authorities tried to set one right against another in order to prevent their realization.

19. Paragraph 2 is no more difficult to implement since, in Belgium, the silence of an international treaty does not have automatic effect against the current legislation in given area. To the extent that the legislation complies with the spirit of the Covenant, it is not possible to invalidate it on the pretext that it is more favourable to individuals than the Covenant itself.

II. SPECIFIC RIGHTS SET OUT IN THE COVENANT

Article 6

The right to work

20. A number of points should be made in relation to the right to work and the free choice of work.

A. Federal level

Employment policy

21. In the context of employment policy, the federal Government has in recent years drawn up a number of plans in order to improve the labour market situation (see annex 1).

22. In 1993, the federal Government called on employers and employees to reach an agreement to restore competitiveness, promote employment and ensure the viability of social security. When it became clear that it was not possible to reach such an agreement, the Government took the initiative itself and at the end of 1993 its overall plan was presented to Parliament for approval. The key aims of this plan were to reduce labour costs, promote the redistribution of labour, introduce more flexibility into certain aspects of the organization of work and encourage the creation of jobs in sectors that are rarely, if ever, considered in the traditional economic sphere.

23. The European Summit held in Essen in December 1994 established five priority areas for action to combat unemployment and each member State undertook to translate them into a long-term employment plan. In accordance with its undertakings at the Essen summit, the federal Government drew up a long-term plan, which was adopted by Parliament in October 1995. In addition to measures aimed at strengthening the economic base, this plan contains incentives for the promotion of employment through a reduction in the cost of labour, redistribution of the available work, enhancement of policy to favour target groups, development of new labour markets and improvements in training.

24. At the beginning of February 1996, the federal Government invited management and labour to take part in talks with a view to laying the foundations of a contract for the future for employment, with the aim of complementing and reinforcing the employment promotion measures taken under the overall plan and the long-term employment plan. However, since the draft contract for the future was not approved by all the representatives of management and labour, the federal Government decided to implement it itself. The House of Representatives adopted the initiative, giving rise to the Act of 26 July 1996 concerning the promotion of employment and the defence of competitiveness. In addition to a series of employment promotion measures, this Act provides for a new wage control mechanism allowing preventive alignment of wage trends with those of Belgium's main trading partners - France, Germany and the Netherlands. In the absence of an employment agreement, the federal Government, in accordance with the Act of 26 July 1996, itself set the maximum wage margin for 1997-1998 at 6.1 per cent.

Measures adopted

25. The main measures set up or adapted in implementing the various plans can be summarized as follows:

(a) Training

26. Youth placement and initial work experience: The aim of this programme is to offer young job seekers an opportunity to gain work experience through temporary employment. All companies employing more than 50 workers must employ, over and above their existing staff levels, at least 3 per cent (1 per cent for government offices) of young job seekers (aged under 30) who have never worked or who have only worked for a short period (maximum six months). During the placement (maximum one year), the worker is entitled to remuneration equal to 90 per cent of the normal wage for the job. At least half the placements are reserved for young people who have been registered as seeking work for at least nine months and who have an initial work experience contract.

27. "Springboard" employment: Any job seeker aged under 30 at the time of starting work and whose employment record, at that time, is no more than six months, may be employed under a "springboard" employment contract. This is an open-ended contract with the advantage, for the employer, of only needing to pay 90 per cent of the normal wage for the first 12 months and having more flexibility to terminate the contract during the first three years.

28. Employment-training agreement: The employment-training agreement is reserved for young job seekers (aged 18 to 25) with few qualifications. It is a system linking work and training, under which the employer benefits from a temporary reduction in social security contributions.

29. Support programme for the unemployed: Under this programme, the full-time unemployed aged under 46 and in receipt of unemployment benefit, entering their tenth month of unemployment and with no upper secondary school diploma, must follow a support programme whose aim is to optimize their chances of re-entering the labour market. The programme consists of three phases:

Assessment of the unemployed person's particular situation;

Preparation and implementation of a personal programme (offer of guidance, training, employment, or a combination thereof);

Results evaluation.

Non-participation or unsatisfactory participation in the support programme has an adverse effect on the right to unemployment benefits.

30. Risk groups: At the signing of the 1989-1990 employment agreement, the two sides of industry decided to make a special effort to help those unemployed who were having difficulty re-entering the labour market and who fell into the risk group category. The Government supported this initiative. The operation has continued since and, for 1997-1998, employers should have signed a collective agreement whereby they donate 0.10 per cent of their wage bill to the employment or training of people in risk groups (to be defined in a collective labour agreement) or of workers following a support programme. Each year an evaluation report and financial overview of the implementation of the agreement must be submitted. Employers who are not bound by a collective agreement must pay an equivalent contribution to the employment fund.

31. Paid education leave: The system of paid education leave aims at career advancement of full-time workers in the private sector. It gives the right to be absent from work with normal pay for a period corresponding to the hours of courses effectively attended. The courses should have some connection with the worker's job or professional prospects. The employer must pay the worker for the unworked hours, but is reimbursed for these wage payments (maximum BF 65,000 gross per month) and for the social security contributions to the Ministry of Employment and Labour.

32. Industrial apprenticeship: Industrial apprenticeship is a training scheme whereby a young person (aged between 15 or 16 and 18) can learn a trade that is usually practised by a waged worker. The apprentice receives practical training in a company and attends supplementary theory classes following a reduced teaching timetable.

33. Resumption of studies by the unemployed: Unemployed persons may, under certain conditions, resume full-time studies while retaining their unemployment benefit.

(b) Labour supply

34. The federal Government has also taken steps to reduce the supply of labour by taking certain workers out of the labour market, thereby freeing positions for job seekers.

35. An early retirement agreement allows older workers (in principle aged at least 58) who become unemployed, and who are covered by a collective labour agreement on early retirement, to receive, until the legal retirement age, unemployment benefit plus a supplementary benefit paid by the last employer, on condition that they withdraw from the labour market. A worker who takes

early retirement must be replaced by an unemployed person in receipt of benefit. Steps have been taken to restrict eligibility for full early retirement.

36. A regime of half-time early retirement has also been established to allow older workers to withdraw more gradually from working life. Workers who accept a half-time work contract can receive wage supplements. The employer must employ an unemployed person in receipt of benefit to work the hours the half-time retired worker no longer works.

(c) Demand for labour

37. Local employment agencies (ALE): The long-term unemployed (unemployed for at least two years) and recipients of the "minimex" (subsistence benefit) may perform, for the ALE, activities not found on the normal labour market. The long-term unemployed are automatically registered as applicants at the ALE for their place of residence. The unemployed may work a maximum of 45 hours per month for the ALE. They retain their entitlement to unemployment insurance and receive an income supplement in respect of their employment. The regulations provide for the possibility of penalizing an unemployed person who has been automatically registered but who refuses to accept an ALE activity deemed suitable in view of his qualifications and training. Nevertheless, a decision was taken in a ministerial circular that absolute priority would be given to those unemployed who volunteered to fill such vacancies.

38. The Maribel: This is a set reduction in the employer's health and social security contribution. The reduction is granted provided it is fully converted into net additional jobs.

39. Redeployment programmes: Active use of unemployment expenditure. Some unemployed persons can continue to receive a set allowance while working under a fixed-term contract in municipalities or non-profit organizations. They should be employed on tasks aimed at satisfying unmet collective social needs. They receive specific support in order to optimize their chances of finding work on completion of their employment in a redeployment programme.

40. Reintegration of the long-term unemployed: The aim of this measure is to create a maximum number of jobs for the long-term unemployed (all who have been unemployed for more than five years and those who have received the "minimex" for more than three years, or two years in the case of unemployed and "minimex" recipients with low qualifications). The unemployed working under this scheme are given a regular work contract, at least half-time and either fixed-term or open-ended. The new jobs will involve work which is not usually, or is no longer usually, performed. A portion of the unemployment benefit or the minimex is used to create these jobs.

(d) Reduction of labour costs

41. The "plus one plan" allows self-employed workers or companies that have never employed staff or stopped employing staff at least 12 months ago, to receive a reduction (on a sliding scale) in employer's contributions over a period of three years for the first worker they employ, provided that this

first worker is a full-time unemployed person in receipt of benefit and that he or she is given an open-ended contract. This plan was recently extended to cover the employment of a second and/or third worker.

42. In order to increase the long-term unemployed's chances of finding work again, the "employment bonus scheme" was set up. Employers who take on a long-term unemployed person (or someone in a similar position) receive a substantial reduction in employers' contributions for two years. A special reduction applies to employment of unemployed persons aged over 50 who have been in receipt of benefit for at least six months.

43. The reduction for low wages aims to cut labour costs for workers with few qualifications. The reduction decreases as the wages rise; it is 50 per cent at the level of the minimum guaranteed wage and 10 per cent for a gross monthly wage of BF 60,000. This represents a reduction in the total cost of wages of between 12.2 per cent and 2.4 per cent, depending on the wage level.

44. The Maribel scheme consists of a general reduction in employers' social security contributions for manual workers. New regulations came into effect on 1 July 1997. The amount of the reduction varies according to the proportion of manual workers on the total company payroll. A set reduction is made for manual workers in a company employing fewer than 10 workers.

(e) Flexibility of employment

45. The principle of prohibiting successive fixed-term contracts has been eased. It is now possible, under certain conditions, to sign successive fixed-term contracts without them being automatically transformed into an open-ended contract.

46. The rules concerning notice for employees and more specifically for the best-paid employees have been changed in order to improve employers' legal safeguards.

47. Two further measures were recently introduced: one allowing employers to call on temporary labour in case of a temporary increase in work (rather than "exceptional" extra work); the other allowing big companies, like small and medium-sized businesses, to calculate the working time on an annual basis (annualization of working time) by means of a change in the labour regulations (as opposed to a collective agreement).

(f) Work sharing

48. The redistribution of the volume of work available among a greater number of people is an important element of the federal employment policy. The system of employment agreements aims to encourage sectors and companies to conclude agreements that will lead to a substantial increase in employment. For the duration of an agreement, the employer receives a reduction in employer's contributions (BF 150,000 per year) for each net additional hiring. The system was extended and strengthened for the period 1997-1998; an important aspect is that the extra jobs should be the result of the application of work redistribution measures. Sectors and businesses may also

opt to apply the extra job subsidy. Companies in difficulty or undergoing restructuring, which, on the basis of a collective agreement, introduce an overall reduction in working time in order to retain a maximum number of workers are entitled to a reduction in contributions. Lastly, around 20 companies will be able, on an experimental basis, to obtain a reduction in contributions for redistribution of employment provided they introduce an overall reduction in working time to 32 hours per week and take on extra workers.

49. In terms of individual measures, mention should be made of the sabbatical scheme which allows workers to leave their jobs for a time or reduce their working hours while being awarded an allowance and keeping their social security entitlements. Workers who take leave or cut their working hours must be replaced by an unemployed person in receipt of benefit. Several measures have been introduced to encourage part-time working. A limited right to part-time work has been established and the social security provisions for part-time workers have been improved. Sectors where the working week is still 40 hours must switch to a working week of 39 hours by 1 January 1999 at the latest.

(g) Loans to the unemployed

50. A scheme of conditional loans to the unemployed has enabled a large number of unemployed people to set up as self-employed workers. This measure was recently boosted by an increase in the maximum amount of the loan.

B. Regional and community levels

51. At the level of the regions, whose areas of responsibility include finding work for the unemployed and worker placement, and at the level of the communities, whose responsibilities include continuing education and professional training, the governments have adopted a number of measures, in many cases complementing the federal programmes.

(a) Flemish Region and Community

52. In autumn 1995, the Flemish Government concluded an employment pact with management and labour. This pact makes employment policy the top priority for the Government and for the two sides of industry, and, in the medium term, aims to halve the number of unemployed. Seven objectives have been defined: better science teaching, through improved means of developing and disseminating technical know-how; continuing training; strengthening of the financial base of companies; an adequately based economic infrastructure; employment opportunities through strengthening of the competitiveness of export-sensitive companies and improved opportunities for labour-intensive companies; employment opportunities corresponding to government priorities or the needs of the profit or non-profit sector; division and redistribution of work. It was agreed that progress in these areas would be evaluated on a half-yearly basis, and the Government has committed itself to incorporating the measures in a long-term plan.

53. As regards direct measures to boost employment, there has been a shift away from traditional policies: although classic measures to support job

creation in the non-commercial sector and systems of subsidized contracts still predominate, there is now more emphasis on programmes that give unemployed people with few qualifications and the long-term unemployed the best possible chance of moving towards the regular employment market.

54. Thus the "jeugdwerkgarantieplan" and the "werkervaringsplaatsen" provide the long-term unemployed and those with low qualifications with work experience and the opportunity to undergo training for that work, for a period of one year. Another aspect of employment policy is an integrated, personalized approach: "trajectbegeleiding" is a made-to-measure programme prepared for the job seeker, which offers not only initial training in line with his or her own qualification needs, but also guidance in obtaining regular work and further training once the worker has been employed.

55. A policy of active cooperation with the private sector is also important in an effective employment policy. For that reason, workers' and employers' organizations have joined forces not only in preparing measures but also in implementing them.

56. Account is also taken of job seekers who are particularly difficult to reintegrate into the job market. Initiatives such as the "sociale werkplaatsen" have therefore been established, whereby a commercial sector employer receives a subsidy to make up for the loss of output and additional costs associated with in-house training for a job-seeker who has been employed.

57. Since 1994, the Government has been subsidizing "invoegbedrijven", i.e. labour-intensive companies carrying out an economic activity that is beneficial to the community. They receive a reduction in social security contributions, decreasing over three years. Lastly, the "leerei landen" aim to put small groups of job-seekers directly to work and provide brief on-the-job training for a specific task; the training is provided by the managers of the company itself in collaboration with an external trainer/instructor.

(b) Walloon Region and French and German-speaking Communities

58. Like its Flemish counterpart, the Walloon Government signed a 17-point joint declaration with management and labour in late 1995 on economic redeployment and the promotion of employment. Thus measures have been or are due to be taken in areas such as the promotion of foreign trade, the improvement of companies' financial situation, research and development (with a convergence between theoretical and applied research), sandwich training, etc. In 1992, regional monitoring of employment began and, in 1994, working groups were set up in four highly specific areas of employment policy, namely: unemployment reduction programmes; employment and training aid; untypical forms of employment; business dynamics and management of labour shortage.

59. As regards aid for employment, mention could be made of a number of measures involving the business and the non-business sectors.

60. In the business sector, the decree of 9 May 1994 aims to help a number of economic expansion projects involving small and medium-sized enterprises

(SMEs) through intervention by the Region in pay and charges for unemployed people taken on as part of these projects. SME aid programmes for the unemployed also receive such regional intervention. The Region also helps offset the expenses of hiring and technical training of staff in new businesses or businesses undergoing restructuring. For businesses implementing new technical processes requiring specialized training for workers, the Walloon Region provides assistance with training costs for up to two years. The Region's contribution is higher if the business takes on new staff for this reason, and higher still if the job-seekers recruited are members of a risk group.

61. In the non-business sector, the Government launched a municipal-level plan in 1995 for employment in the areas of cleaning, socio-cultural and sporting activities, environmental maintenance and child care. This measure was extended in 1996 and subsidized groups are also able to use this system.

62. The Walloon Agency for the Integration of the Disabled was created in 1995. Among other things, it deals with training and employment support for the disabled.

63. In the area of training for the disabled, which is the responsibility of the French and the German-speaking communities, two possibilities are open: an occupational retraining contract with an employer for practical training in a real work situation or a contract for occupational training given in a centre approved by the Agency. Anybody receiving such training receives unemployment benefit and wage supplements.

64. In the area of employment support, employers of disabled persons can receive two kinds of bonus: a retraining bonus (financial assistance with wage costs during a period of occupational retraining lasting between three months and three years) or a compensation bonus (assistance with part of the pay and the social contributions arising from the loss of output involved in employing the disabled worker).

65. In the area of occupational training, which has been the responsibility of the Walloon Region since 1 January 1994, subsidies have been given to various training organizations, including on-the-job training companies, which are non-profit-making organizations whose aim is to provide training for participants through practice and theory. In addition, school-business training brings students from the age of 16 into contact with the reality of life in a company, alternating with the world of school.

(c) Brussels Capital Region

66. In this Region, various programmes similar to those set up in the other regions have been implemented.

Article 7

Right to the enjoyment of just and favourable conditions of work

Determination of wages

67. Wages are determined according to minimum legal wage schedules set by collective bargaining. Collective agreements take precedence over individual contracts of employment, and the provisions of individual contracts which contravene collective agreements are null and void: in such cases they would be superseded by the amounts laid down in the collective agreement. The rules governing minimum wages are also applicable when a contract is concluded which does not provide for a specific wage or when it is difficult to determine the wage specified.

68. For professional staff, whose wages and working conditions are often not covered by collective agreements, wages are determined by individual bargaining.

69. It is important to note that minimum wage rates are in principle determined by management and labour rather than the governmental authorities. Nevertheless, economic circumstances and the fact that management and labour have not followed the Government's recommendation to conclude multi-industry agreements have led the Government to take two types of measures: first, regulations on the way in which wages are linked to the consumer price index, and second, a policy of wage moderation.

70. To compensate for loss of purchasing power from currency devaluation (inflation), wages are linked to fluctuations in the consumer price index. From 1 January 1994 onwards, wages have been indexed in accordance with a "health-index" corresponding to the previous index minus a few products (alcohol, tobacco and fuel). The use of this new index, however, cannot result in a drop in wages. The penalty for failure to observe this indexing method can be as severe as a prison term.

71. Wage moderation during the period 1994-1996 meant that no individual contract of employment or collective labour agreement could include wage increases or new entitlements in any form whatsoever. Failure to respect these terms is punishable by imprisonment. The Wage Moderation Act of 26 July 1996 provided for a maximum range of labour cost increase in keeping with the labour cost increase in certain reference countries, applicable for the following two years. The labour cost increase is 6.1 per cent distributed over two years and includes indexing and increments.

Minimum monthly wage scheme

72. The minimum monthly wage is governed by Collective Agreement No. 43 of 2 May 1988, concluded by the National Labour Council. It applies to workers aged 21 and over who are performing full-time work and guarantees an average gross minimum wage.

73. As at 1 October 1997, the following amounts were guaranteed: BF 45,069 (a minimum of 12 months' seniority and 22 years of age), BF 44,538 (a minimum of 6 months' seniority and 21.5 years of age) and BF 43,343 (other). These amounts are linked to the consumer price index.

Equal pay

74. Equal pay is governed by Collective Agreement No. 25 of 15 October 1975, concluded by the National Labour Council, concerning equal pay for male and female workers, and by the Act of 4 August 1978.

75. In order to make equal pay effective, a number of specific programmes have been set up and subsidies granted for different campaigns and model projects. However, there has so far been little change in the income differences between men and women. Women in industry earn only 67 to 75 per cent as much as their male colleagues. These figures rise to 70 to 80 per cent in the service sector. There are many reasons for this gap. They include differences in career paths, part-time work, which is performed by more women than men, and the fact that there are also more women working in certain sectors where wages are generally lower.

76. Job classification by type of work, which is rank-ordered and often based on tradition, is also a factor in the wage gap, although current policy focuses on establishing a neutral classification that is free of gender considerations. For example, the requirements for so-called masculine functions, such as physical strength, can no longer be regarded as more important than skills which play an important role in feminine functions, such as manual dexterity. The skills required must now be neutral with regard to sex. A code of conduct for the establishment of job classifications has been concluded and material for training representatives of management and labour responsible for establishing and/or adapting vocational classifications and job evaluations has been prepared and issued by the Ministry of Employment and Labour. Training sessions are planned for 1997-1998.

77. In the legislative sphere, it has been suggested that the concept of "job classification" be included in the Act of 4 August 1978, which governs equality of treatment. A draft royal decree has also been submitted to the National Labour Council with a view to introducing classification by function into the labour regulations.

Safety and health

78. The Act of 4 August 1996 concerning well-being in the workplace is relevant in this connection. The goal of the Act is to bring together all the current regulations governing this area and part of the previous general regulations on protection in the workplace, around a new and modern unifying concept.

79. The following are the main changes with respect to the previous regulations: expansion of the scope of the Act (the only workers still not covered are domestic employees and volunteer workers); safety and health measures have been expanded, so that consideration must also be given to the

psychological and social impact of the work performed; the term "well-being", which includes all factors relating to the circumstances in which the work is performed; terminology and certain structures.

80. Provisions on safety are treated as a group in the general regulations. As the regulations are difficult to use and fragmentary, they are gradually being replaced by royal decrees which take up the new European regulations and those provisions of the general regulations that are relevant to them. The final objective is to group all these texts together in a code on well-being in the workplace. But in the interim both the general regulations and the royal decrees are being used.

81. Numerous amendments have also been made in the general regulations since 1993. It is unfortunately not possible to mention them all here.

Rest periods

82. Time and length of breaks may be freely determined, except as regards young workers, who may not work for over four and a half hours without a break. The general regulations also contain provisions governing rest periods for people exposed to high temperatures.

Working hours

83. Working hours are limited by law to eight hours per day and forty hours per week. However, numerous collective agreements (some of which have been made mandatory by a royal decree) provide for shorter hours.

84. In future a generalized reduction in working hours is planned: by 1 January 1999, all full-time workers included in either the Act on collective labour agreements and/or the provisions on working hours contained in the Act on Employment must be covered by a collective agreement which reduces working hours to a maximum of 39 per week or which uses a method other than calculation on a weekly basis to arrive at equivalent hours. For workers not covered by these two instruments, the same maximum length of working hours will be set by royal decree.

Night work

85. There has been an important change in this area. Night work is considered to be work performed between 8 p.m. and 6 a.m. and is in principle prohibited. A few general exemptions to this prohibition are contained in the Act on Employment and are equally applicable to men and women. Specific exemptions are also provided but apply only to male workers over 18 years of age.

86. The new Act of 17 February 1997 relating to night work has reorganized the provisions governing night work for both men and women. This Act will enter into force on 8 April 1998. The new system governing night work, which applies basically to workers in the private sector, maintains the principle of prohibition of night work (work performed between 8 p.m. and 6 a.m.) for both men and women.

87. The exemptions, which used to be different for men and women, are now the same. Three sorts of activity may be performed at night:

(a) Activities which must be performed at night because of their nature. A limited list of such activities is provided (hotels, medical establishments, bakeries, reform schools);

(b) In cases where night work is chosen for economic reasons or made necessary by economic constraints (team work, perishable substances), a royal decree must be issued after the opinion of the competent joint body has been sought;

(c) For other sectors a royal decree authorizing night work is required. These three categories cover all cases in which male or female workers may perform night work. However, the actual decision to employ workers for night work, in cases authorized or stipulated by law, must be the subject of a special procedure (collective labour agreement or amendments to the labour regulations).

Sunday rest

88. It is in principle prohibited to make anyone work on Sunday. There are, however, three kinds of exceptions: general exceptions, valid for all Sundays or for an entire Sunday; partial exceptions, valid for certain Sundays or for part of a Sunday; and team work. Exemptions are also allowed for tourist centres, the list of which has been expanded.

Article 8

Trade union rights

The right to form and join trade unions

89. The 1993 report refers in this connection to article 20 of the Constitution, which, became article 27 pursuant to the constitutional reform. As far as the right to join trade unions is concerned, there have been no significant changes since the preceding report.

90. It is worth mentioning, however, that although the Covenant refers only to the positive right to join trade unions, in the Act of 24 May 1921 on Freedom of Association Belgium also provides for the right not to join a trade-union movement.

The right of trade unions to function freely

91. As indicated in the preceding report (E/1990/5/Add.15 of 13 May 1993), there is no legislation restricting trade union activities. Trade unions function with complete independence from the Government. However, some remarks are necessary concerning the Committee's criticisms of the system whereby the trade unions are represented in the different collective bargaining bodies in Belgium; admittedly, the authorities wish to negotiate with only those trade unions that are influential in the social and economic life of the country. For this reason, the legislation frequently establishes

representativeness as a condition for participation in collective bargaining. In this context, it is in fact left to the discretion of the authorities to decide which organizations are representative, but they do so on the basis of criteria laid down in the constituent instrument of the National Labour Council.

92. In this connection the preceding report referred to a bill in preparation, which would set more objective criteria. This bill is still under consideration.

The right to strike

93. The right to strike is guaranteed in article 8, paragraph 1 of the Covenant, provided that it is exercised in conformity with the laws of the particular country. It should be noted in passing that there appears to be no consensus within the Committee concerning which forms of strike (authorized, wildcat, political ...) should be given protection under the Covenant and, therefore, all forms of strike should provisionally be regarded as protected.

(a) Private sector

94. In the legislative sphere: there have been no changes in the situation. However, there are sufficient indications to conclude that the right to strike is widely recognized in practice. Firstly, article 6 (4) of the European Social Charter, which is directly applicable in Belgian law, recognizes the right to strike (for non-political strikes). The same can be said for the domestic legislation. Although the legislator does not recognize the right to strike as such, regulations exist governing certain of a strike's effects. It may therefore be concluded that the legislator is implicitly recognizing this right.

95. The foregoing is illustrated by the following three examples:

(i) Act of 19 August 1948 on public service duties, which establishes a system for guaranteeing that certain vital economic activities will continue in case of a strike or lock-out. It is for the joint committees to define which activities should be regarded as vital and as requiring continuation.

(ii) The Act of 3 July 1978 on contracts of employment, which contains provisions that implicitly recognize a right to strike. Article 11 authorizes the replacement of a worker whose contract has been suspended, if the suspension is due to a reason other than a strike or lock-out. Employers are therefore prevented by law from breaking a strike by hiring new personnel. Article 27 denies workers the right to demand a wage if they go on strike, stipulating that this right is recognized to workers who "at the time of arrival in the workplace, are fit for work and (...) those who, with the exception of strikes, cannot begin work for reasons beyond their control ...".

(iii) The unemployment regulations: in Belgium, the right to unemployment benefit is linked to having worked for a certain

period of time prior to the application for unemployment benefit. Where the regulations specify what is meant by "work day", strike days are considered to be equivalent to work days.

96. Legal precedents: reference may also be made to a judgement of the Court of Cassation of 21 December 1981, which is generally considered to be the basis for the right to strike in Belgium. In this judgement the Court used a contrario reasoning to arrive at its decision that the Act on public service duties recognizes the right to strike.

97. This is exemplified by an excerpt from the Public Prosecutor's conclusions: "There is no doubt that an essential aspect of the Act on public service duties is the fact that every worker has the right not to perform the work stipulated owing to a strike and therefore, to derogate from article 1134 of the Civil Code and not to fulfil the obligation set forth in the contract of employment". These remarks are cited by the Antwerp Labour Court among the reasons adduced for its judgement of 27 May 1988.

98. Current legislation contains no provisions prohibiting a worker from participating in any strike whatsoever, and legal practice rightfully accepts the right to strike as a given. As a corollary to this conclusion, no distinctions are made between wildcat, authorized, political or sympathy strikes as far as the right to strike is concerned.

(b) The public services

99. Article 8, paragraph 2, authorizes the imposition of lawful restrictions on the exercise of the right to strike by members of the armed forces, police or administration. The only permissible limitation on freedom of association is found in the regulations governing the military, who may neither join trade unions nor go on strike. No restrictions are established for civil servants.

100. Concerning the right to strike, it should be noted that the Act on public service duties does not apply to the public sector. A contrario reasoning can therefore not be used as a rationale. Indications must be sought elsewhere to support the conclusion that civil servants' right to strike is recognized.

101. A first indication is found in the European Social Charter, article 6 (4) of which recognizes the right to strike as applying to both the private and public sectors. It may reasonably be concluded that this instrument is directly applicable under Belgian law.

102. A second indication is found in the Royal Decree of 26 September 1994, which stipulates that civil servants shall lose wages if they go on strike. Here again, the establishment of regulations governing the consequences of a strike means that the strike itself is being recognized. The opinion of the Council of State with regard to these regulations is that it may be concluded that there are no other types of disciplinary punishment which may be imposed on striking civil servants.

Trade-union representation

103. Trade-union representation in the National Labour Council (CNT) respects the previous criteria, and recognition is given to multiplicity of inter-occupational and sectoral trade unions in the private and public sectors. In 1995, the traditional representation of management in the CNT was expanded to include non-commercial enterprises: "Members representing the organizations most representative of employers in the non-commercial sector shall participate in the work of the National Labour Council as 'associate members'. Their positions may, at their request, be published as annexes to the opinions of the CNT" (Royal Decree of 7 April 1995 - Moniteur belge of 17 May 1995). Non-commercial enterprises are grouped into a non-profit pluralist confederation. These enterprises comprise approximately 300,000 persons. Workers in these branches are represented by trade unions in the service sector: banks, businesses, socio-cultural activities and health. The purpose of expanding the managerial component of the CNT is to enhance a sector based on principles other than the strict market economy and non-profit companies with a strong commitment to helping society.

Protection of trade-union delegates

104. The Act of 19 March 1991 establishing specific rules governing dismissals provides special protection against dismissal for delegates and alternates representing workers on councils and committees as well as for candidates to those bodies who were not elected. The Act introduces changes with respect to the Acts of 1948 and 1952 as regards the following:

The definition in the Act on employment of a serious reason requiring previous acceptance by the labour court;

The obligation to inform the worker being protected and his organization of the charges against him;

The prior negotiation procedure (five days) preceding legal action in the labour courts, for the purpose of avoiding certain dismissals;

Adjustments in the judicial procedure;

Protection of the worker during this procedure (allowance supplementing the unemployment benefit, suspension of the contract of employment if necessary ...);

Adjustments in the procedure of dismissal for financial or technical reasons: the joint committee responsible for the firm must unanimously give its previous acceptanbce to the reason invoked in order for protection to be lifted. If the joint committee fails to take a decision an application is automatically lodged with the labour court.

105. The 1991 Act has clearly improved the protection of workers and, without endangering employers' freedom to dismiss workers, makes it more difficult for them to do so. Although the new Act has been heavily criticized and has

raised some essentially procedural difficulties, it has attained one of its main objectives to increase the use of negotiation and reduce the number of court cases.

Union membership rate

106. The union membership rate among Belgian workers up to 1991 has been assessed by a Belgian research centre. According to this study, which was published in 1993 and whose figures are not official, the membership rate in all categories rose from 42.85 per cent taken as a whole in 1947 to 76.61 per cent in 1991, with a spectacular increase among manual workers, from 50.51 per cent in 1947 to 98.25 per cent in 1991, and white-collar workers, from 23.59 per cent in 1947 to 35.59 per cent in 1991. In the public sector, 55.81 per cent of employees are members of a trade union. These figures are markedly higher than those published by the Organization for Economic Cooperation and Development, which deducts those union members not currently employed (unemployed, disability pensioners, old-age pensioners, students) and automatically adjusts for over-assessment with respect to the other member countries of the OECD.

Article 9

Social security

107. Belgium has made some readjustments in its social welfare system (see annex 2) since its initial report. However, nothing of significance has been called into question. Rather, the changes are aimed at modernizing the current system to make optimal use of resources and ensure that the system will continue in the long term, without undermining the idea of the need for solidarity within the Belgian population. Emphasis has also been placed on improving service to the beneficiaries by means of very specific data collection and processing measures. A "charter for social security beneficiaries" aims at achieving the same goal by guaranteeing a form of "humanization" of relations between beneficiaries and the administration. Finally, Belgium's social policy concerning aid to the disabled will be discussed supplementing the initial report on this point.

Act of 1 August 1996 modernizing the social security system and ensuring the viability of the statutory pension schemes

108. It should first of all be noted that this is a framework-law whose objectives are achieved progressively through royal decrees, which are then confirmed through legislation. This procedure permits a more precise, coordinated and rapid implementation of the objectives than the usual legislative procedure would allow.

109. Article 2 of this framework-law sets out the objectives sought in particularly explicit terms:

> "The purpose of this law is to modernize the social security system and to ensure the viability of the statutory pension schemes by taking into account societal and demographic changes and the new needs they engender, and the following basic principles are its goals:

1. Safeguarding the social security system by linking social insurance to solidarity;

2. Ensuring that the social security system remains financially sound over the the long term;

3. Confirming the importance of alternative financing to reduce labour costs;

4. Strengthening the global management of all the branches of the social security system;

5. Modernizing social security management by simplifying administrative obligations, on the one hand, and by increasing the responsibility of the parastatal social partners, on the other, and by improving services;

6. Increasing the monitoring of mechanisms used to avoid payment of social contributions and strengthening measures to combat abuses and social fraud;

7. Maintaining and if possible improving the standard of living of persons who are exclusively dependent on the lowest social security and social welfare allowances."

110. As a detailed analysis of the legal and technical means used to attain these objectives would be beyond the scope of this report, we shall therefore briefly indicate the salient points of these measures below:

(a) Alternative financing

111. Belgium has decided to seek alternative financing for its social security system. Such an approach makes it possible to reduce both individual and employer contributions while maintaining coverage of the risks involved. This measure aims indirectly at increasing the number of workers, which will naturally have a positive impact in terms of traditional income. In practice the total amount of alternative financing will be deducted form value added tax income and expressed as a percentage of this income. The proportion has been set at 19.34545 per cent since 1997.

(b) Health care

112. Several sections of the Act deal with halth-care problems; this subject will be included in the discussion of article 12 of the Covenant.

(c) Pensions

113. One of the main challenges which a social security system must meet concerns the financing of the pension system. Several factors must be taken into consideration. We do not propose to revert in detail to the particularly disturbing demographic developments in Belgium: today, one person in five is over 60 years of age; this ratio will rise to one in three by the year 2030.

In pension terms, these figures signify the following: today's ratio of 49 pensioners for 100 working people will tend towards a ratio of 89 to 100 by the year 2030.

114. Sociological factors must be given due weight: the increase in the number of working women and changes in family structures have a direct impact on pensions, which is reflected by an increase in the number of personal pensions, linked, admittedly, to a growing number of persons contributing to the system. The new structure of the labour market should also be borne in mind: there are an increasing number of people working on a part-time basis in Belgium today. Finally, Belgium is seeking to incorporate into its legislation Directive 79/7/EEC concerning equal treatment for men and women in matters of social security. In effecting this much-needed modernization of the different pension schemes, Belgium seeks to maintain the following basic principles: priority for statutory pensions; respect for the specificity of the different schemes and maintenance of pension rights for persons whose pension became payable for the first time before the Act's entry into force.

115. In order to maintain the pensions' financial viability, the basic idea is to act both on income and expenditures. This confirms the key role of alternative financing, without losing sight of the importance of solidarity among pensioners. This approach should make it possible to resolve pension issues while also ensuring, inter alia, an improvement in minimum entitlement per year worked and a greater accessibility to statutory pension schemes.

116. Various adjustments have been made in the pension schemes for employees and self-employed persons concerning the age of retirement for men and women and the level of guaranteed income for elderly persons for both men and women.

(d) Family allowances

117. Changes are currently being introduced in the family allowance scheme, aimed at making access easier for socio-economically disadvantaged families while improving the efficiency of the family allowance schemes by taking new family structures and situations into account. For more information on this subject the reader is referred to the discussion of article 10 of the Covenant.

(e) Welfare status of self-employed persons

118. The framework-law also introduces a thorough reform of the welfare status of self-employed persons, in all its aspects. As in the employees' scheme, global financial management is introduced for all schemes and sectors connected with the welfare status of self-employed persons. There are a number of specific measures to encourage supplementary pensions for self-employed persons. This policy should generally help to improve the status of self-employed persons.

119. Special attention is given to self-employed persons who have declared bankruptcy. Because of increaed competition and the growing number of bankruptcies, sincere self-employed persons belonging to this group need to be

provided with a special scheme. The scheme consists of a monthly allowance for a period limited to three months, with rights in the family allowance and health care sectors continuing for one year.

(f) Modernization of administrative obligations and structures

120. The framework-law also introduces a series of very specific measures for modernizing and simplifying administrative obligations.

121. The information network linking the social security bodies (Banque-Carrefour), which provides them with controlled electronic access to their respective data, is geared more to replacing multiple data collection from employers, self-employed persons and employees. This simplification should help to create an atmosphere conducive to job creation and, on that basis, improve traditional income. These new methods also make the social security bodies more effective, which should be to the advantage of the beneficiaries themselves.

122. In practical terms these measures consist of the following: Documentation is reduced as much as possible. Beneficiaries are covered by the same standardized individual account throughout their career or existence. A multi-purpose statement enables the employers to communicate to the National Social Security Office in a single statement, all data relating to the employment, wages and working hours of his personnel.

123. This multi-purpose statement is divided into an immediate statment, which is made when a particular event occurs (recruitment, termination of contract, etc) and a periodic statement, covering selective and temporary informaton at the end of fixed time periods. The insured person is provided with a social identity card. The card, which is both human- and machine-legible, contains all the data needed for dealing with any of the social security branches.

124. Finally, the parastatal social partners will be made responsible at the structural level and will consequently be given some autonomy. This autonomy wil take the form of an administrative contract between the agencies involved and the Government. Naturally, the objectives sought will be achieved by means of incentives and penalties.

Charter for beneficiaries of social welfare schemes (Act of 11 April 1995)

125. The "Charter for beneficiaries of social welfare schemes" is one of the most significant initiatives taken to achieve communication between the different beneficiaries of the Belgian social security system and its administrations. The goal is to create the optimal conditions for accessibility to information, transparency, speed, accuracy and simplicity in the processing of cases.

126. To achieve these objectives, five basic duties are introduced for the social agencies. They must provide anyone who submits a written request with accurate and complete information about his rights and obligations. The competent agencies are required to advise anyone submitting such a request concerning the exercise of his rights or the fulfilment of his obligations.

It should be noted in this connection that inaccurate advice resulting in harm to the beneficiary may render the agency liable to harsher penalties than before (obligation of result). Agencies must also ensure that requests for information or advice are forwarded to the proper quarters ("multiple request" principle). The use of language that is more easily understood by the public is another aspect of this new culture of communication. Finally, the administration is asked to state the reasons for any individual decision, no later than the time it is carried out. The statement of reasons must include a description of the modalities and time limits for lodging appeals against the decision.

127. These very specific improvments had become necessary in view of the great complexity of the social legisation: they represent a major effort which is having a considerable impact on the quality and efficiency of the services offered to beneficiaries of social welfare schemes.

Allowances for disabled persons (Act of 27 February 1987)

128. The Act introduces three types of allowance for disabled persons: the income-replacement allowance, the integration allowance, and the allowance for assistance to elderly persons. To be eligible for these allowances, a person must actually be living in Belgium, i.e. his name must appear on the population register, and must be doing so on a permanent basis (there are, however, exemptions to the latter requirement).

129. In addition, the person must be either Belgian, or a national of a country that is a member of the European Community, and must be a worker covered by EEC Regulation 1408/71, or the surviving relative of such a worker (spouse, child, father or mother) and essentially dependent on the worker; a refugee; a stateless person or person of indeterminate nationality; a person covered by the European Interim Agreement; or a national of Algeria, Morocco or Tunisia and have worker status. The conditions for the grant of these allowances are generous and reflect Belgium's concern to do its utmost to ensure material well-being for seriously disabled persons. The allowances are granted after an inquiry into the person's income.

(a) Income-replacement allowance

130. This allowance is granted to disabled persons no less than 21 and no more than 65 years of age whose physical or psychological state has been determined to have reduced their earning capacity to one third or less of the amount a healthy person may earn by engaging in an occupation in the general labour market. Disabled persons less than 21 years of age are considered on the same basis as disabled persons 21 years or over if they are married or have been married or have one or more dependent children or if their disability occurred after they stopped receiving family allowances.

131. The amount of the income-replacement allowance varies according to whether the beneficiary has dependents, lives alone or lives with a partner, and is at least equal to the minimum subsistence amount. The annual amounts at 1 October 1997 were BF 334,660 for beneficiaries with dependents, BF 250,993 for beneficiaries living alone and BF 167,343 for beneficiaries living with a partner.

(b) Integration allowance

132. The integration allowance is granted to disabled persons no less than 21 and no more than 65 years of age or persons in related categories whose lack of autonomy or reduced autonomy has been established. Disabled persons less than 21 years of age are considered on the same basis as disabled persons 21 years or over if they are married or have been married or have one or more dependent children or if their disability occurred after they stopped receiving family allowances.

133. This allowance consists of a lump-sum payment which varies according to the disabled person's degree of autonomy and the category to which he belongs. Each category is assigned a number of points. This number is determined using a medical-social scale which takes the following factors into account: mobility; ability to ingest or prepare own food; ability to maintain personal hygiene and to dress; ability to look after dwelling place and perform housework; ability to live without supervision, to be aware of and able to avoid danger and ability to communicate and interact socially. This allowance varies from BF 34,433 to BF 273,144 per year (at 1 October 1997), depending on the category to which the beneficiary belongs.

(c) Allowance for assistance to elderly persons

134. This allowance is granted to handicapped persons at least 65 years of age whose lack of autonomy or reduced autonomy has been established; it is not granted to handicapped persons who are eligible for an income-replacement or integration allowance. In this way a clear separation is made between beneficiaries according to whether the disability occurred before or after the age of 65. These disabled persons must also claim their entitlement to the guaranteed income for elderly persons and to the retirement or survivor's pension for which they are eligible. The amount of the allowance is set on the basis of the same points system as the one used for the integration allowance (with a few differences in the determination of the categories). The amounts vary from BF 112,317 to BF 197,513 per year (at 1 October 1997).

Article 10

Protection of the family and of children

135. The reader is referred to the information provided by Belgium in the discussion of articles 23 and 24 in its third periodic report on the implementation of the International Covenant on Civil and Political Rights (August 1996), annexed to this report.

136. Reference is also made to Belgium's initial report (July 1994) on the implementation of the United Nations Convention on the Rights of the Child (see annex 3), to the three summary records of the Committee on the Rights of the Child concerning this report (May-June 1995) and to Belgium's reports on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. The Ministry of Justice has published a compilation of these documents, which is available to the public in the three national languages.

137. Since 1993 there have been several changes in the legislation aimed at providing greater protection for families and children. This policy has been strengthened since the end of 1996. As a result of the tragic events which shook Belgium in August 1996, concerns have focused on children and the need to protect them against all forms of violence or sexual exploitation. For this reason the Belgian Government and Parliament have recently adopted a number of measures to deal with the problems of ill-treatment and sexual abuse of children. These measures concern prevention, punishment and aid to victims.

Children's rights

138. The child's opinion as to who should exercise parental authority, in the event of divorce or separation of the parents, is important, as the decision to be taken is one that will drastically affect his life.

139. Whereas in the past Belgian legislation provided for the child's views to be sought only in exceptional cases, the new article 931 of the Judicial Code, introduced by the Act of 30 June 1994, makes it possible for the views of minor children capable of discernment to be heard, at their request or by the judge's decision, in all proceedings affecting them. However, the fact that their views are heard does not make them parties to the case. This provision becomes applicable in certain divorce cases when the president of the court orders temporary measures on behalf of the children (Judicial Code, art. 1280). It also comes into effect in divorces by mutual consent, in connection with the spouses' original agreements regarding the children (Judicial Code, arts. 1290 and 1293), and in cases where the district judge takes urgent temporary measures under article 223 of the Civil Code.

140. Similarly, pursuant to new article 56 bis of the Protection of Young Persons Act of 8 April 1965, introduced by the Act of 2 February 1994, the children's court is obligated (rather than simply empowered as in the past) to hear a minor 12 years of age or over in disputes involving persons holding parental authority over him, when points that affect him are discussed.

141. It should be noted that, even before these legislative changes, there had been legal decisions in divorce procedures applying article 12 of the Convention on the Rights of the Child, which gives children who are capable of forming their own views the right to express those views freely in all matters affecting them.

Protection of the family

142. The Act of 29 April 1996 introduced significant changes in eligibility for family allowances. Family allowances are now granted to children up to 31 August of the calendar year in which they reach the age of 18 years, with no other requirements. Between the ages of 18 and 25, family allowances are paid in respect of apprentices, children enrolled in classes or undergoing a period of training leading to an appointment, children who have completed higher education course work and are preparing a thesis and children who have finished their studies or an apprenticeship and are registered as seeking employment.

Maternity care

143. Two new laws dated 3 April 1995 provide better protection for pregnant women, both in terms of health and exposure to specific risks, and in terms of legal situation in cases of wrongful dismissal. In the latter case, a pregnant worker who has been dismissed for reasons connected with her condition is entitled to six months' gross salary in addition to the usual compensation in lieu of notice.

Risk assessment

144. Any activity which might entail a specific risk must be assessed by the employer in consultation with the medical officer and the service responsible for safety, health and improvements in the workplace and a written report must be issued. The pregnant (or breastfeeding) worker involved is informed of the results of the assessment.

145. According to the Act of 3 April 1995 (Moniteur belge of 10 May 1995), workers are entitled to leave work for prenatal medical examinations if such examinations cannot take place outside of working hours. A worker must inform her employer in advance and provide the latter, on request, with a medical certificate justifying her absence. Certain types of work are prohibited for pregnant workers (Act of 3 April 1995, Royal Decree of 2 May 1995).

Protection of children and adolescents

146. A particularly interesting initiative in the Flemish community is worthy of mention. A strategic plan for preventive care was prepared by Kind en Gezin (Child and Family), the government agency responsible for this policy in the Flemish community. Regional centres provide regular consultation services for any parent desiring information on practical aspects of child care. The agency has also established a study and action unit for improving and strengthening the position of children within the family and society.

Protection of young workers

147. Young workers are minors 15 years of age or over who are no longer subject to mandatory full-time school attendance. The Act of 21 March 1995 has lowered young workers' working hours to 8 hours per day and 40 hours per week. It also provides for a weekly day of rest in addition to Sunday, to be taken on either Saturday or Monday. If a young worker has to work on Sunday or on his supplementary rest day, he must be allowed a compensatory rest period of 36 hours.

Article 11

An adequate standard of living and housing

148. A number of major initiatives have been taken in this area since 1993; they clearly reflect the constant concern of Belgium and its regional entities to combat social exclusion and prevent poverty.

149. An exhaustive presentation of this policy is given in the General Report on Poverty (see annex 4), which was prepared in 1994-1995 at the request of the Minister for Social Integration by the King Baudouin Foundation, the International Movement ATD Fourth World Belgium and the Union of Belgian Towns and Communes. To enable the Government to follow up this report as effectively as possible, and to continue the dialogue with the associations of underprivileged people whose testimony and ideas helped in its preparation, an Interministerial Conference on Social Integration was established in 1995. This forum regularly brings together all the federal, community and regional ministers and secretaries of state concerned by poverty. Proposals for concrete measures to reduce social exclusion are prepared by specialized working groups and submitted to the Conference for approval. A first progress report is currently in preparation and can be made available as soon as it is published. The report submitted by Belgium to the Second United Nations Conference on Human Settlements (Habitat II) may also be consulted for matters relating to housing policy (see annex 5).

150. The most recent initiatives taken to control poverty and social exclusion are described below, insofar as they do not appear in the two reports mentioned above.

A. Federal level

(a) Article 23 of the Constitution: Fundamental right

151. The new article 23 of the Constitution establishes the fundamental right to a satisfactory standard of living ("everyone has the right to lead a life consistent with human dignity"), and the fundamental right to housing ("right to decent accommodation"). These fundamental rights are similar to those guaranteed by article 11 of the Covenant, and the comments made in connection with the discussion of article 2 of the Covenant naturally apply to them as well.

152. The scope of the fundamental right to a satisfactory standard of living is at present the subject of debate in Belgium. In its judgement of 26 June 1994, the Court of Arbitration ruled that a fundamental right of this kind could be subject to certain limitations in the case of well-defined general policy objectives. The judgement concerned a case of limitation of the right to welfare of illegal foreigners who had been ordered to leave the country.

(b) Guaranteed minimum income

153. One of the conditions applicants must meet in order to receive the guaranteed minimum income is to prove that they are prepared to be put to work. Since 1 March 1993, this proof may, inter alia, involve accepting and continuing a personalized social integration project. To secure and retain the right to the minimum means of subsistence, a beneficiary under 25 years of age must, unless precluded for health or equity reasons, sign and abide by a contract containing a personalized project of this kind.

154. The entitlement to a one-twelfth increase in the amount of the minimum subsistence payment was already granted to homeless persons on their final

departure either from an establishment where they had been living as a result of a decision by a judicial or administrative court or from an establishment or institution approved by the competent authority for housing persons in distress. Since 1 January 1997, this "installation bonus" has been granted to anyone who loses the status of homeless person by occupying a dwelling that serves as his or her principal residence and to persons who leave a campsite where they had been living on a permanent basis. This bonus is fixed at the equivalent of one month of "minimex" at the maximum rate (currently BF 27,888), regardless of the household situation of the beneficiary.

(c) Social integration

155. An entire section of the Act of 1 August 1996 on the modernization of social security is devoted to social integration. It is concerned with implementing the recommendations of the General Report on Poverty on the basis of the work of the Interministerial Conference on Social Integration. Through this Act the Government aims to make improvements to the policy on poverty, inter alia, in respect of the homeless, permanent residents of campsites, young people receiving "minimex" and other specific risk groups (see annex 4, recommendations of the General Report on Poverty).

156. Opportunities for employment and social integration have recently been expanded because since 1 January 1996 the public welfare centres have been exempt, under certain conditions, from payment of the employer's social security contributions, and people employed through them can be made available to a communal administration, another public welfare centre or a non-profit association with social or cultural aims.

B. Regional level

157. Responsibility for housing policy rests primarily with the regional bodies (Flemish Region, Walloon Region and Brussels Capital Region). The various measures taken as part of these responsibilities were presented in the report for Habitat II (see annex 5, pp. 31-40, Flemish Region; pp. 21-26, Walloon Region; and pp. 39-40, Brussels Region). However, there are a number of new initiatives that deserve mention.

(a) Flemish Region

158. On 15 July 1997 the Flemish Government promulgated a Flemish Housing Code in which the right to housing is recognized and guaranteed. Some substantial changes have been made to the Flemish Government order of 29 September 1994 governing the rental of low-cost housing belonging to the Flemish Housing Company or to companies recognized by that body. As a result of these changes, priority is given to the homeless and people living on campsites, people leaving an unhealthy dwelling and old people leaving an unsuitable dwelling.

159. Minimum quality standards for housing have also been defined. The policy of encouraging the optimum utilization of the available space has been strengthened. A tax on abandoned buildings has recently been introduced and all revenue from this is allocated to housing projects.

160. Two new initiatives in town planning should be mentioned: the experiment Sociale Vernieuwing (Social Renewal) and the Sociaal Impulsfonds (Social Incentive Fund).

161. The experiment Sociale Vernieuwing began in 1995 in five large Flemish towns (Antwerp, Genk, Ghent, Leuven and Mechelen) and consists of making a budget of BF 200 million available for each town. These subsidies enable the towns to undertake projects focusing on the rehabilitation of poor neighbourhoods. The aim of these projects is to raise the standard of certain neighbourhoods by redeveloping economic activity, improving living conditions and making more efficient use of the existing infrastructure. Special stress is laid on the active participation of the people living in these neighbourhoods. This experiment is scheduled to continue until the end of 1997.

162. The Sociaal Impulsfonds is an instrument that brings together existing resources (the Flemish Fund for the Integration of the Underprivileged, the Special Grant, the Special Fund for Social Welfare) and contributes some new resources. This Fund amounted to BF 4,428 million in 1996. From 1997 onward the amount will increase by BF 1,000 million each year until 1999, when the Fund will have reached its cruising speed. The Flemish Government makes these resources available to local authorities to enable them to conduct a policy on three fronts: the restoration of quality of life and environment in towns, especially in poor neighbourhoods; the fight against poverty; and the promotion of well-being. This is a multiple approach to urban problems and amounts to a genuine development policy. The efforts are not confined to a single aspect of the problems, but deal in a concerted manner with housing, mobility, the economic fabric, employment, town planning, education, policy on immigrants, socio-economic assistance for the inhabitants, etc. The available financial resources are distributed according to objective criteria: numbers of immigrants, "minimex" recipients, young unemployed, long-term unemployed, disabled persons, underprivileged families, below-standard dwellings, subsidized apartments, etc. The Flemish Government has concluded with the local authorities result-oriented agreements running for several years. Participation by the populations concerned is also encouraged. The purpose of the Social Incentive Fund is to provide a comprehensive and concerted approach at the local level to the numerous problems involved in improvement of the urban living environment.

(b) Walloon Region

163. One of the major initiatives of the Walloon Government was the creation of Agences Immobilières Sociales (Agencies for Low-cost Housing) in 1993 (see annex 6). This system, which has since undergone a number of improvements, is governed by the Walloon Government order of 4 July 1996 (coordinated version) on the creation of agencies for low-cost housing.

164. The system may be summarized as follows. The purpose of an Agence Immobilière Sociale (AIS) is to promote access to decent housing for people on low incomes by seeking the best possible match between the supply of potentially available dwellings and the determined local needs for low-cost housing. To ensure that the AIS is able to achieve its aims, it is essential that its partners and founder members include not only public bodies

(communes, public welfare centres, companies registered with the Walloon Regional Housing Company, province, intercommunal bodies) but also private partners. To attain its assigned objectives, it ensures that as many dwellings as possible in the public and private sectors enter, remain in or re-enter the rental market. It acts as mediator between owners/landlords and households in serious financial difficulty. It does so by concluding contracts with the owners for the management of apartment blocks or parts of apartment blocks. A lease links the owners/landlords directly with the tenant households. An apartment block or part of an apartment block of which the AIS intends to take over the management must be made available to it by tenancy agreement, by emphyteutic lease or by management agency. The AIS may have work of minor importance carried out at its own expense. For a household to acquire a dwelling managed by the AIS, its income must not exceed the maximum unemployment allowance by more than 50 per cent, although exceptions may be made to this admission requirement in cases of excessive debt. It is important to note that, in addition to its role as intermediary in housing matters, the AIS must ensure regular social supervision aimed at reintegrating its tenants into society. This supervision has to include budgetary guidance in cases of excessive debt. Indeed, it involves teaching people about every aspect of tenancy, in particular when to pay the rent, how to use the dwelling properly and how to respect the human and physical environment. Finally, the AIS must assist ejected tenants in their efforts to find other accommodation.

165. The annual subsidy granted to each AIS is fixed at BF 3,300,000 for the first two years of operation. After that the amount varies according to a number of parameters and may even be increased. In an effort to deal with the housing shortage and to reintegrate people in a situation of social emergency (the homeless, disaster victims), the Walloon Government has decided to subsidize a number of housing initiatives (Walloon Government order of 16 January 1997 concerning the conditions for granting subsidies for "tiding-over" accommodation). Under this order the Walloon region grants subsidies to bodies which carry out restoration work on one or more apartment blocks that are unfit for habitation but capable of improvement and which then assign the premises for "tiding-over" accommodation. This accommodation is reserved for households in a difficult situation.

166. A household in a difficult situation is understood to be a household which does not have decent accommodation and whose monthly income is not more than one-twelfth of the minimum subsistence level plus 20 per cent; or a household deprived of its dwelling by <u>force majeure</u> (dwelling that has become uninhabitable, expropriated dwelling, overcrowded and insanitary dwelling, social emergency caused by a disaster or homeless status). Throughout the period of accommodation the body providing it must ensure regular social supervision aimed at reintegrating the persons concerned into society. Stress is laid on the temporary nature of the accommodation: the relationship between provider and occupant is governed by a temporary occupancy agreement and the tenant is encouraged to seek other suitable accommodation (within time limits compatible with the situation of the persons concerned).

(c) Brussels Capital Region

167. In this Region too, many initiatives have been taken to meet the need for low-cost housing, to provide housing for the homeless, to promote renovation work, to assist families in obtaining accommodation, etc.

Article 12

Health care, public health and environment

168. The health care system has undergone no radical changes since the initial report. However, mention must be made of the new article 23 of the Constitution, which guarantees the right to health ("right to health protection and to social, medical and legal assistance; right to protection of a healthy environment"), which reinforces article 12 of the Covenant. For the scope of this right, reference is made to the discussion of article 2 of the Covenant. The Federal Government has also embarked upon a modernization process arising out of the wish to ensure a sound financial basis while maintaining the quality, efficacy, accessibility and proper organization of health care. This process, initiated by the Act of 1 August 1996, is being undertaken in conjunction with partners in the medical world, which explains the gradual nature of its implementation.

169. With regard to the environment, reference is made to the report prepared for Habitat II (see annex 5), which describes the federal policy (which is concerned with the general aspects of environmental quality, international cooperation and interregional coordination (see pp. 12-13)) and the policies of the various regions (which are responsible for achieving the federal objectives and for environmental matters specific to each region) (see pp. 29-30 for the Flemish Region, pp. 20-21 for the Walloon Region and pp. 37-38 for the Brussels Region).

Modernization of the health care sector

170. General framework: Belgium wishes to outline the major features of the modernization of its health care system that is now in progress. One of the Government's major concerns is to guarantee the financial stability of health insurance by ensuring that everyone involved in the management of this sector acts in a responsible way. Only with a stable financial situation is it possible to conduct a health policy that is open to all without making any concessions as regards the quality of the services provided.

171. Central medical records: one of the issues currently being discussed with those involved in the health sector is the keeping of a medical record for each patient. This record would be entrusted to the general practitioner, who is familiar with the personal and family situation of his patients and who would thus play an important role in the health care process. The aim is to provide effective primary medical care so as to reduce or avoid the use of more expensive secondary care. Of course, satisfaction of the patient remains both an incentive and a tool for evaluating this efficacy.

172. Access to health care: in order to ensure that everyone has legal access to and can afford the compulsory insurance for health care and

allowances, the preferential VIPO status (Widows, Disabled Persons, Pensioners and Orphans) has been extended to other categories and the conditions of eligibility for insurance will be harmonized and made more flexible, especially for the underprivileged socio-economic groups.

173. Amendments to hospital legislation: the Belgian legislation on hospitals is currently being amended so as to modernize the concept of the hospital, improve its quality, define and refine the regulations on day hospital care, clarify the relationship between the hospital budget and medical fees, and define more clearly the public health responsibilities of every hospital towards the entire population, with no discrimination of any kind.

Articles 13 and 14

The right to education

174. As was explained in the previous report (see E/1990/5/Add.15, paras. 233 to 236), the community councils have full authority to organize education in the broadest sense of the term, except for the exceptions explicitly set out in article 127 of the Constitution, namely the determination of the start and end of compulsory schooling, the minimum requirements for the award of diplomas, and the pension scheme. Since 1989 each community has developed and autonomously "managed" education within its area of competence, which has resulted in some differences in the measures taken by each of them to achieve the objectives stated in the Covenant.

Flemish Community

175. The Flemish Community has instituted a number of programmes to enable school authorities to cope better with the specific needs of certain categories of students.

(a) Immigrants

176. Since 1991 the Flemish Community has been implementing a programme aimed at countering school drop-out and discrimination. Schools attended by students of immigrant origin from underprivileged backgrounds receive assistance from the authorities in order to strengthen and improve the students' knowledge of the Dutch language; to promote a policy for preventing and solving school problems; to overcome cultural differences through intercultural education; and to improve collaboration between parents, neighbourhood and school.

177. Subject to certain conditions the schools may also organize teaching in the language and culture of the immigrant communities. Newly arrived non-Dutch-speaking foreign students attend a number of schools distributed throughout Flanders, where they undergo intensive language teaching. After one year they can attend ordinary schools.

178. The policy of non-discrimination began in 1993 and applies to all schools, even those that have no students of immigrant origin. Its objectives are to improve the balance in the numbers of immigrant students by making free

choice of schools a reality and to adopt a form of education that pays more attention to multicultural coexistence. On 16 July 1993 the Minister of Education and the authorities that organize education signed a declaration on non-discrimination, in which it was laid down how these objectives will be achieved over a five-year period. The declaration was also signed by the trade unions and parents associations.

(b) Handicapped students

179. Students with a physical or mental disability can attend schools provided with special facilities: this special education provides appropriate teaching for children from nursery school up to the end of secondary education, depending on their type of disability and needs. These facilities, which were set up in the 1970s, have gradually been improved.

180. There are also initiatives to promote the reintegration of handicapped students into ordinary education: in some projects the student is supervised and receives additional assistance within the setting of ordinary education. Finally, some small-scale experiments have been carried out during the current school year (1996-1997) to encourage structural collaboration between ordinary schools and schools providing special education.

(c) Children with learning problems

181. Since 1994 the Community has provided supplementary resources to encourage schools to complement their regular teaching activities by taking an interest in the prevention of learning and educational problems. These supplementary staffing resources enable the school to pay more attention to children whose schooling is "threatened". The supplementary teaching covers the transition from nursery school to primary school, most specifically children aged four to seven years. Schools with a substantial number of underprivileged children are given priority.

182. Finally the governmental agreement and the Minister's letter on educational policy stipulate that the programmes for "extending" attention and the policy governing priorities in education should be merged in a programme for the encouragement of equality of opportunity in education.

183. The attention paid to students who have to repeat school years and to scholastic failure as a whole has led to a movement in basic education which encourages the school to take greater "care" of threatened children. Through supplementary teaching, the Community gives schools the opportunity to deal with these problems in an ad hoc manner. The essential purpose is to prevent scholastic failure through appropriate treatment. Prevention is thus the central objective.

French Community

184. Primary education has been compulsory since 19 May 1914. The Act of 29 June 1983 establishes the period of school attendance as 6 to 18 years of age. Free education is guaranteed under the Constitution. Moreover, school attendance is compulsory for every minor living in the territory

(whether legally or clandestinely). Since the period of compulsory schooling covers secondary education, the entire age group concerned attends secondary school.

185. It should be noted that as from the age of 15/16 years compulsory schooling may take the form of part-time education if the student registers for a recognized training course. No direct or indirect registration fee (minerval) may be charged. Higher education is subject to a registration fee.

186. Since primary education has been compulsory since 1914, the whole of the present population has received such education. However, successive waves of migration have led to a constant recurrence of the problems linked to generalized schooling. Consequently, exclusion, scholastic failure and illiteracy are still very real concerns for all the decision-makers. A recent study puts the number of victims of functional illiteracy at 300,000 to 400,000.

187. To overcome these shortcomings, a number of mechanisms have been set up for continuing education (non-profit associations that promote the integration of young people, immigrants, etc.) or teaching (social advancement, distance learning, etc.).

188. A number of measures have been taken within the system to encourage successful schools, and to ensure that too many students do not fail or fall behind (platforms of skills, evaluation of learning, strengthening of the continuous training of teachers, rationalization of technical and occupational training, introduction of alternating classes, redeployment of resources, etc.)

189. The constitutional provisions are directed primarily at meeting the educational demand of parents, while respecting their philosophical convictions. The result is a wide variety of educational supply in the form of networks of public or private education, in which the teaching may or may not be denominational. Despite this diversity, however, three general objectives have been established for compulsory education:

education must promote the personal development of each student;

by enabling young people to build up their knowledge, education should lead them to take a place in economic life;

education should guide young people to become responsible citizens in a free society.

190. Education for citizenship and for international understanding is included in all educational programmes and structures. Here attention should be drawn to the recent initiative taken by the Government of the French Community in setting up a "democracy or barbarism" unit, which serves as a resource centre for all teachers who wish to deal with these issues in greater depth.

191. A number of agencies are involved in combating illiteracy. These may be:

public authorities (teaching of social advancement, distance learning, training for job seekers, etc.);

associations for continuing education (these vary in number but associations of this type are present in all the regions covered by the French Community).

192. The "Reading and Writing" group, a federation of 128 literacy associations in the French Community, has 6,447 participants.

193. Given the downward demographic trend, there are no plans to build any more schools (the French Community currently has 6,036 educational establishments), but necessary refurbishment of dilapidated buildings is regularly undertaken.

194. All schools have the same academic year: classes begin on 1 September, and the school year ends on 30 June. The school year must include 182 teaching days. Holidays are scheduled at Christmas and Easter (two weeks each), for All Saints and in February (one week each), plus certain public holidays.

195. Two tables showing the male/female ratio in education are attached (see annex 7).

196. The French Community has had special education classes for children with motor, sensory or mental handicaps since 1970 (law of 6 July 1970). Attendance conditions are very good (transport, supervision, etc.). Urban and rural areas enjoy equal access and have equal resources at their disposal.

197. All children, without differentiation on grounds of gender, ethnic origin or language, enjoy the same rights and facilities regarding access to education. The regions of Wallonia and Brussels administer a school transport system involving all the transport networks, collecting pupils and taking them to the nearest freely-chosen school and home again once each day. The season-ticket price is based on the public transport services tariff. However, children under six years of age or in special education travel free of charge. A 50 per cent reduction is available for families with three or more children.

198. As of 1 January 1994, the immigrant population accounted for 9.11 per cent of the Kingdom's inhabitants. In schools, in the French Community of Belgium alone, 14.5 per cent of pupils in pre-school classes, 16.8 per cent of primary school pupils and 17.2 per cent of secondary school pupils were from immigrant backgrounds.

199. The school system therefore has a major role to play in the insertion and integration of tomorrow's adults, by advocating an intercultural approach or even intercultural teaching methods. This teaching approach aims at acceptance of the other through respect for cultural differences, rather than

rejection due to fear of differences; whilst at the same time expecting a genuine willingness on the part of those who have chosen to live in the French Community to fit into the fabric of society.

200. To aid in the social insertion of children from immigrant backgrounds, many of whom are born in Belgium, the French Community has set up partnership agreements with Greece, Italy, Morocco, Portugal and Turkey. These bilateral cultural agreements enable schools enrolled in the scheme to benefit from the presence of a teacher, or several teachers, from these countries. An evaluation of this partnership was carried out on 1 October 1995 at the request of the Minister of Education. The different findings made it possible to draft a new Partnership Charter. Since the start of the academic year 1997-1998, initiatives in this field have been drawn up on this basis. Intercultural teaching, learning the language of origin, and improved learning of French - the teaching language - are among the aims pursued.

201. In addition to the creation of priority areas for education (ZEP), begun in 1989, since 1992 there has been a "positive discrimination" policy with an operating budget of over 1 billion Belgian francs. A list of schools requiring "priority support" was drawn up according to the following criteria:

(a) Pupils: incidence of educational backwardness, and new arrivals - foreign students from countries outside the European Union (knowledge of French).

(b) Pupil behaviour: absenteeism and dropping out of school, violence and vandalism.

(c) Parents: drawing income support, unemployed, absent, refugees, or living in sub-standard housing.

202. Ninety-four schools were chosen following this examination, half in the Brussels Capital Region, half in the region of Wallonia.

203. The French Community of Belgium has two types of activity in schools for helping non-native pupils to learn French, the classroom-teaching language: in primary schools, teachers are responsible for lessons in adaptation to the French language; in secondary schools, special classes have been set up for new arrivals.

204. Adults, for their part, can attend community institutions. Statistics are not kept on these.

German-speaking Community

205. The German-speaking Community has high-quality general education organized under statutory conditions similar to those in the other Communities.

Article 15: Cultural policies

The new law on copyright

206. The law of 30 June 1994, on copyright and related rights, replacing the law of 22 March 1886, came into force on 1 August 1994. It updates the protection of copyright, in view of modern technical developments and natural cultural changes since 1886. It also aims to harmonize Belgian legislation with the regulations of the European Union.

207. Certain important changes are introduced by this law; these do not, however, wipe out more than a century of regulation, jurisprudence, commentary and practice. The law of 22 March 1886 still regulates the use of works undertaken before the new law came into force. Moreover, the fundamental rules and principles of copyright established by the old law, such as moral and economic rights, are also found in the new law.

208. One of the main contributions of the law of 30 June 1994 concerns what it terms "related rights". Previously, only the authors of a work benefited from protection of the work and its exploitation. Henceforth the law also protects individual performances and media products generated by audiovisual, record, radio and television producers. Performers benefit from certain moral rights. The exclusive right of performers to present their performances or to authorize their reproduction is also recognized, as is the right to distribution and public broadcasting. The rights are therefore very similar to those granted to authors.

209. The new law devotes 16 articles to regulating authors' exploitation agreements. The old law merely made reference to the Civil Code. Many precautions must henceforth be taken in acquiring a copyright. Belgium now has additional protection for authors: notably, assignment of copyright must be proved in writing. In general, the form and content of all contracts for the transfer of copyright are fixed by mandatory provisions.

210. In principle, copying records or films onto cassette is prohibited, as is the photocopying of texts protected by copyright. However, subject to certain conditions, the lawmakers have authorized copying for private use, without the consent of the copyright holder. In order to compensate for the financial loss to authors, producers and performers, a levy for private copying has been provided for. The modalities of collecting, distributing and monitoring this levy are set out in the Royal Decree of 28 March 1996, under which the levy must be paid by the manufacturer or importer of blank cassettes or of equipment for audio or audiovisual recording. A levy is also provided for to benefit literary authors and publishers when equipment with photocopying capacity is made available. Photocopy outlets and certain users will also pay a levy, depending on the number of photocopies made.

211. The law provides for the formation of royalty management companies (or collective management). These are companies which collect or distribute legally recognized royalties, on behalf of a number of copyright holders. The new law makes it obligatory for these societies to intervene to ensure that certain types of remuneration are received.

212. The law also strengthens the penalties for criminal offences and provides for civil action as an emergency interim measure, modelled on action in the Court of Cassation.

213. Many European directives touch on the subject of copyright and related rights. The transposition of these directives has resulted in new rights: the period of copyright is extended by 20 years. A work enters the public domain 70 years (no longer 50 years) after the death of the author or the last of the co-authors. The new law also sets out the rights of lease and loan, and also the right of communication by cable and satellite. Another law, also dated 30 June 1994, transposes into Belgian law the European directive on the legal protection of computer programmes. These programmes are classified as literary works and protected by copyright.

214. The law of 30 March 1994 refers both to uses recognized as such by the profession, i.e. to well-established practices, and to the treaty on the European Union - which is to an extent a gamble on the future harmonization of these rights. These positions are rather uncommon and deserve to be mentioned within the framework of this report.

Cultural policy in the Flemish Community, 1994-1996

215. The Department of Culture of the Ministry of the Flemish Community has authority in the following domains: fine arts, museums, literature, music, the performing arts, community education, public libraries, and youth affairs.

216. An overview is given below of the funds provided by public authorities and private initiative to encourage cultural development and individual participation in cultural life (1994-1996).

Overall totals by sector (in millions of Belgian francs)

	1994	1995	1996
(a) Painting and sculpture	77.4	71.9	73.4
(b) Museums	197.2	202	197.9
(c) Literature	143.1	153.3	154.1
(d) Music	939.5	1 012.1	1 006.2
(e) Performing arts	1 076.3	1 132.3	1 142.7
(f) Continuing education	1 548.9	1 605.7	1 744.1
(g) Public libraries	1 502.8	1 659.8	1 751.7
(h) Youth activities	1 036.1	1 036	1 050.5

Legislative or regulatory framework

217. Various texts govern these subjects within the Flemish Community. Other draft legislation is currently being drawn up. Among the texts currently in force, the following should be mentioned: the Podiumkunstendecreet of 27 January 1993 governing the performing arts, the Decreet verenigingen of 19 April 1995, designed to encourage community activities, the Decreet instellingen of 19 April 1995 which reorganizes the various institutions responsible for promoting culture, and the Decreet diensten of 19 April 1995 which provides for subsidies for organizations which foster and support sociocultural activities. Texts currently in preparation mainly concern the recognition of museums, and subsidies for them, the Muziekdecreet which will reorganize the various orchestras, ensembles and music festivals, and the decrees to be issued within the framework of national legislation on copyright, etc.

218. Lastly, attention is drawn to the fact that since the last reform of the Belgian State (1993), the different Communities are now able to conclude international treaties on subjects which fall within their authority. The Flemish Community is endeavouring to make the best possible use of this new opportunity.

Infrastructure

219. The Flemish authorities provide the necessary infrastructure to encourage maximum participation in cultural life. Each sector has one or more premises where contact with the public enables the discipline to flourish.

220. For fine arts: the Frans Masereel Centre for Graphic Arts in Kasterlee; for museums: the Royal Museum of Fine Arts and the Museum of Contemporary Art in Antwerp, and Gaasbeek Castle in Lennik; for literature: the Royal Academy for the Dutch Language and Literature in Ghent; for music: the Flemish Opera in Antwerp and Ghent. The performing arts have the Flanders Royal Ballet in Ghent, de Singel Artistic Centre in Antwerp, l'Ancienne Belgique, the Kaaitheaterstudios in Brussels, the Beursschouwburg in Brussels and Lunatheater in Brussels. Community education mainly takes place: in the Amateur Arts Centre in Brussels, in the various cultural centres of the Flemish Community in Amsterdam, Bilzen, Brussels and Voeren; in the 83 other cultural centres which, although they do not belong to the Flemish Community, are partly financed by the public Community budget; in the trefcentra in Brussels, which are meeting-places for the Flemish Community (contact with immigrants is also encouraged there); and in public libraries (321), financed by the public Community budget and spread throughout the entire Flemish Community. Lastly, in respect of youth policy: various infrastructures are placed at the disposal of associations responsible for youth activities.

Promoting cultural identity

221. This promotion of culture is intended as a stimulus to mutual understanding between people, groups, nations and regions. The Flemish Community uses the following means: publication of yearbooks, books, brochures and reviews on art and culture in Flanders; translation of Flemish works with a view to exporting them; financial support for initiatives which

promote the various sectors of Flemish culture abroad; Flemish representation at international conferences on cultural questions; the award of prizes to artists, associations or institutions which contribute to the development of Flemish cultural identity; and support for community initiatives such as library week, amateur arts week, etc. This cultural promotion is not focused on Flemish culture only. Measures are also taken to enccurage the cultural identity of various ethnic and minority groups.

Audiovisual policy

222. Within the Flemish community audiovisual stations classified in the following manner:

(a) Public stations

223. De Nederlandse Radio en Televisiuitzendigen in Belgie, Omroep van de Vlaamse Gemeenschap (BRTN), is the public broadcasting corporation which transmits both radio and television programmes. BRTN's mission is to reach the widest possible number of viewers and listeners through a variety of programmes which generate and satisfy the interest of viewers and listeners. BRTN has to give priority to broadcasting cultural and informative programmes built around the viewer and listener. Its annual budget is some 9.5 billion Belgian francs.

224. There are three approved target-group stations: Kinderatelier, Kunstkanal Vlaanderen and Senior TV. Currently only Kinderatelier is operational. (Kinderatelier only broadcasts for 2 hours each week).

225. The television stations which broadcast to the entire Flemish community (BRTN, VTM and Filmnet) have to allot most of the broadcasting time which is not devoted to news, sporting events, game shows, advertising or teletext to European productions. The Flemish Government determines the number of Dutch-language productions. These television channels have to allot at least 10 per cent of their broadcasting time, as set out above, to independent productions.

226. Public radio (see para. 223) is distinct from local radio, which is aimed at a local community. The purpose of local radio is to provide a variety of information, stimulus training and relaxation, to promote communication among the population in their broadcasting area.

227. The theoretical broadcasting range is limited to an eight kilometre radius the Flemish Government makes an exception for the Brussels Capital Region.

228. To be approved, local radio broadcasters must be set up in the form of a non-profit association. They are financed through advertising and local sponsorship. There are currently 337 approved local radio stations in operation.

229. From the foregoing it will be seen that the right to freedom of expression in the media is guaranteed in the Flemish community, at the local and the regional level. With regard to public access to foreign stations it

should be noted that the Flemish community has the highest density of cable network in the world (95 per cent of the population can receive between 25 and 30 radio and television programmes via cable).

230. The decision to have only one private television company for the whole Flemish community is directly linked to the concern to ensure the survival of existing newspapers and magazines, thus maintaining the plurality of the written press. By law, 51 per cent of the Company's share capital must be held by the publishers of Dutch-language newspapers and magazines.

231. Over 40 million Belgian francs each year go to subsidizing the written press, the majority of which is direct aid to periodicals providing analysis and commentary. A smaller sum is reserved for what is known as "selective assistance". For these purposes, BRTN has two television channels (TV1 and TV2) and five radio networks (plus Radio Flanders International which broadcasts abroad).

232. The public broadcaster is financed partly by a grant from the Flemish Community and partly by sponsorship revenue (radio and television) and advertising (radio only). BRTN has a national radio advertising monopoly.

(b) Private stations

233. Television stations must have juridical personality under private law and have their headquarters in the Dutch-speaking part of Belgium or in Brussels.

234. One private television station broadcasts to the whole of the Flemish Community; its programmes aim to promote communication and to contribute to overall development; its aim is to provide information, education and relaxation through a balanced programming schedule.

235. The Flemish Government has approved the Vlaamse Televisie Maatschappij (VTM) as a private television station broadcasting to the whole Flemish community. It is financed by sponsorship and advertising (VTM has a national television advertising monopoly).

236. Regional stations: one regional station is approved for each region (the Flemish community is divided into 10 regions); the broadcaster must be a non-profit association (ASBL). The composition of its management structures must be such as to ensure representativity. As complementary media, the function of the regional stations is to inform, stimulate, educate and relax, with the aim of promoting communication among the population and contributing to overall social and cultural development within their broadcasting area. Providing regional news and a service to the public are paramount. With the exception of TV-Brussel, regional stations are not subsidized by the Flemish Community; they are financed through advertising and regional sponsorship.

237. Target-group stations: these are aimed at a specific target group within the Flemish Community. The social aim of these stations is simply to provide socio-cultural and educational programmes and training.

238. The General Association of Professional Journalists of Belgium receives an annual subsidy of 5.7 million francs. In 1994 the Flemish authorities and the press sector created the ASBL "Stichting voor de Vlaamse Pers" (Flemish Press Foundation). The aim of this Foundation is to study problems arising in the newspaper and periodical sector and take initiatives to revitalize this sector, and to promote a reading culture. The Foundation's second purpose is to promote the continuing education of established and trainee journalists. Training initiatives related to this function can be subsidized up to a maximum of 75 per cent by the Foundation. The Foundation's operating budget in 1994 and 1995 was over 11 million Belgian francs.

Cultural policy in the French and German speaking communities

239. Although it was not possible to gather detailed information, these communities do also encourage a cultural life spanning several domains (fine arts, radio and television, cinema, a variety of schools, theatre, folklore, etc.).

LIST OF ANNEXES*

1. Federal employment policy: evaluation report.

2. Report of the National Social Security Office.

3. Initial report by Belgium on the Convention on the Rights of the Child.

4. General Report on Poverty, King Baudouin Foundation.

5. Report by Belgium on preparations for the second United Nations Conference on Human Settlements, Habitat II (Istanbul, 3-14 June 1996).

6. Housing in the region of Wallonia, subsidized-housing agencies.

7. Ministry of Employment and Labour, Equal Opportunities Branch, Egalité entre hommes et femmes, basic documentation, 1997 edition.

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* The annexes are available for consultation in the secretariat.